

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

KARLO LEVINCE LANE

PLAINTIFF

V.

CIVIL ACTION NO. 3:19-CV-733-KHJ-FKB

DR. STEVEN BONNER,  
EVELYN DUNN, and  
KIMBERLY K. BROWN

DEFEENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge F. Keith Ball. [46]. The Report recommends that the Court grant Defendants' Motion for Summary Judgment [35] and dismiss this action with prejudice. Written objections to the Report were due by February 8, 2021. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. [46] at 5. Plaintiff Karlo Levince Lane filed objection.

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and

contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Lane brings his claims under 42 U.S.C. § 1983 for alleged constitutional violations he suffered during his confinement at East Mississippi Correctional Facility. Report [46] at 1. Under the Prison Litigation Reform Act of 1995, any prisoner seeking to bring an action under § 1983 for prison conditions must first exhaust administrative remedies. 42 U.S.C. § 1997e(a)(Supp. 2000); *see also Booth v. Churner*, 532 U.S. 731, 740-41 (2001). Administrative remedies must be sought prior to filing suit. *Gonzales v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012). The Court has no discretion to excuse a failure to exhaust administrative remedies and must dismiss non-exhausted claims. *Id.*

The Magistrate Judge entered his Report and Recommendation, finding that the undisputed record shows Lane failed to exhaust his administrative remedies prior to filing this action. [46] at 5. Based on this finding, the Magistrate Judge recommended Defendants’ Motion for Summary Judgment [35] be granted and the action dismissed. *Id.* Lane has filed no objections to the Report and Recommendation. After review of the record, the Court, being fully advised in the premises, finds that the Report and Recommendation is neither clearly erroneous nor contrary to law, and should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [46] of United States Magistrate F. Keith Ball, entered in this cause should be, and the same is, adopted as the finding of this Court. Defendants’

Motion for Summary Judgment [35] is GRANTED. This action is DISMISSED.

Because the case is dismissed for failure to exhaust, this dismissal shall be  
WITHOUT PREJUDICE.

A separate Final Judgment shall issue this day.

SO ORDERED, this the 23rd day of February, 2021.

s/ Kristi H. Johnson  
UNITED STATES DISTRICT JUDGE